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February 10, 2000

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David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

**In Re: Notice of US LEC Corp of "Bona Fide Request" for an Interconnection  
Agreement with TDS Local Exchange Carriers Pursuant to 47 U.S.C. § 251  
Docket No. 00-00026**

Dear David.

Enclosed herewith are the original and thirteen copies of the Response of US LEC in the above-referenced docket.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:

  
Henry Walker, attorney for US LEC Corp.

HW/nl  
Enclosure  
cc: Parties

**POSTED**  
2-11-2000

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

REC'D TN  
REGULATORY AUTH.

IN RE: NOTICE OF US LEC CORP OF "BONA FIDE REQUEST" FOR AN  
INTERCONNECTION AGREEMENT WITH TDS LOCAL EXCHANGE  
CARRIERS PURSUANT TO 47 U.S.C. § 251

FILED FEB 10 PM 4 23  
EXECUTIVE SECRETARY

DOCKET NO. 00-00026

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**RESPONSE OF US LEC IN OPPOSITION TO MOTION TO SUSPEND BY TDS**

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TDS Telecom ("TDS") has filed a motion asking that the Tennessee Regulatory Authority ("TRA") suspend these proceedings which were initiated at the request of US LEC Corp. ("US LEC") in order to offer local exchange telephone service in competition with TDS. As explained more fully below, US LEC opposes the motion. The federal Telecommunications Act, under which US LEC filed its request, requires that the TRA act on this matter within 120 days. The TRA has no power to waive that deadline, except upon agreement of the parties, and no power to "suspend" US LEC's request to compete against TDS until the agency has conducted an evidentiary hearing and determined that TDS is legally entitled to remain a monopoly provider.

**BACKGROUND**

US LEC is a state-certified, local exchange carrier that wants to compete for customers in parts of Tennessee served by subsidiaries of TDS Telecom. TDS controls 97,280 access lines in Tennessee, as of Sept. 30, 1999, and earns approximately \$53 million in annual revenue.<sup>1</sup>

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<sup>1</sup> See "Monthly Report of Tennessee Revenues, Expenses, and Investments Combined for Concord, Humphreys County, Tellico, and Tennessee Telephone Company" for the month (continued...)

Under the federal Telecommunications Act, each TDS subsidiary is considered a “rural carrier” and therefore partially exempt from the interconnection obligations imposed by the Act on larger local exchange carriers. *See* 47 U.S.C. §251(f)(1). Nevertheless, the Act and the FCC’s rules also provide that a potential competitor, such as US LEC, may ask state regulators to review “on a case-by-case basis” whether the rural exemption should be lifted. *See* 47 CFR §§ 51.401 through 51.405.

On January 4, 2000, US LEC made a “bona fide request” of the TDS companies for interconnection services and access to unbundled network elements. A copy of the request is attached. Such a request triggers the state review process under Section 251(f)(1) of the Act. Within 120 days, according to the Act, the TRA “shall terminate the [rural] exemption” unless the TDS companies can prove that the interconnection request is either not technically feasible or is “likely to cause undue economic burdens beyond the economic burdens typically associated with efficient competitive entry.”<sup>2</sup>

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<sup>1</sup>(...continued)

ending Sept. 30, 1999, on file at the Tennessee Regulatory Authority.

<sup>2</sup> *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial mobile Radio Service Providers; Report and Order*, CC Docket Nos. 96-98 and 95-185, FCC 96-325 (August 8, 1996) (Interconnection Order), paragraph 1262.

The federal Act, Section 251(f)(1), actually prescribes a three-part test: (1) technical feasibility, (2) harm to the incumbent carrier and (3) harm to customers. *See* footnote 3, *infra*. However, the FCC’s rules and the agency’s Interconnection Order appear to blend the second and third parts into one criterion. According to the FCC, an incumbent LEC responding to a bona fide interconnection request “must offer evidence” that granting the request “would be likely to cause undue economic burdens beyond the economic burdens typically associated with efficient competitive entry.” Interconnection Order, paragraph 1262. *See* 47 CFR §51.405(c).

On January 21, 2000, TDS filed a motion asking the Tennessee Regulatory Authority to “suspend” this proceeding pending the outcome of a related docket, “Petition of the Tennessee Small Local Exchange Company Coalition, *et seq.*, Docket No. 99-00613. In that proceeding, a coalition of rural carriers led by TDS requests --- not merely partial but --- total exemption from all interconnection obligations. The Coalition also asks the TRA to deny any interconnection requests from potential competitors such as US LEC.

### ARGUMENT

1. The TRA has no authority to “suspend” the 120-day statutory timetable once a carrier files a “bona fide request” for interconnection under § 251(f)(1). The 120-day limit is mandatory and sub-section (f)(1) contains no provisions for suspension or delay.

2. Under §251(f)(2), the TRA does have the authority to suspend or modify a carrier’s interconnection obligations. Such a suspension would have the practical effect of denying US LEC’s request for interconnection. The TRA, however, cannot make that decision until after the agency has conducted an evidentiary hearing and TDS has demonstrated that it has met the statutory criteria set forth in sub-section (f)(2). These criteria are essentially identical to the criteria set forth in sub-section (f)(1).<sup>3</sup>

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<sup>3</sup> Sub-section (f)(1), under which US LEC has requested interconnection, states that such a request for interconnection must be granted if it is (1) technically feasible, (2) not unduly economically burdensome, and (3) consistent with the universal service principles set forth in Section 254 (“Quality services should be available at just, reasonable, and affordable rates.”)

Sub-section (f) (2), under which the Coalition has sought relief, states that the Coalition’s request shall be granted if necessary (1) to avoid imposing a requirement that is technically infeasible, (2) to avoid a significant adverse economic impact on users or (3) to avoid imposing a requirement that is unduly economically burdensome. The Authority must also find that the Coalition’s request is “consistent with the public interest.”

(continued...)

In other words, the TRA cannot grant TDS's Motion as if it were a request for a stay or temporary injunction. The federal Act does not offer that kind of relief. To grant TDS relief, the Authority must conduct a hearing and rule on the merits of US LEC's request.

3. TDS also argues that US LEC's request be suspended because T.C.A. §65-4-201(d) prohibits competition within the TDS service areas. TDS acknowledges, however, that this statute has been preempted by order of the FCC and that, although an appeal is pending, the statute is not currently in effect.

4. TDS finally argues that the TRA should take no action on US LEC's request for interconnection because US LEC has not made a "bona fide" interconnection request. According to TDS, the January 4 letter from US LEC is not a bona fide request because the letter does not delineate "specifics as to the exchanges" where US LEC wishes to operate or describe "specific services" US LEC wishes to offer or obtain from TDS.

The letter from US LEC is a typical request for interconnection as described in Section 252(a)(1) of the Act. As the letter states, it outlines "an initial framework for interconnection negotiations" but is obviously not intended to be an entire interconnection proposal.

"Bona fide" simply means "made in good faith, without fraud or deceit; sincere; genuine." Black's Law Dictionary, Seventh Edition (1999). TDS does not dispute that US LEC's request has been made in good faith. That is all the Act requires.

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<sup>3</sup>(...continued)

As explained in footnote 2, *supra*, the FCC has reformulated these criteria into a shorter test which applies both to requests for interconnection under sub-section (f)(1) and requests for protection from competition under sub-section (f)(2). See 47 CF R §51.405 (c) and (d).

TDS complains that, without more specifics, the company cannot quantify “the true impact to TDS and its customers” of U.S. LEC’s request, and, therefore, cannot demonstrate whether the request will cause “undue economic burdens.” TDS Motion, at 4. TDS made a similar argument to the FCC. (“Several parties [including TDS] state that they do not believe that generalized for letter requests should be considered a bona fide request.” FCC Interconnection Order, paragraph 1257.) The FCC, however, “declin[ed] at this time to establish guidelines regarding what constitutes a bona fide request.” *Id.*, at paragraph 1265. Therefore, US LEC’s interconnection request is a “bona fide” request under the FCC’s rules. *See* 47 CFR § 51.405(c).

Furthermore, TDS’s argument misapprehends the nature of this proceeding. This case is not about the specific plans of US LEC but about how competition *per se* will impact TDS. As the FCC explained, the statutory test begins with the hypothetical assumption that interconnection will create “efficient competitive entry.” Given that assumption, TDS must demonstrate that opening its market will likely cause economic hardships above and beyond the normal impact of competition. Therefore, TDS --- not US LEC --- “is in control of the relevant evidence necessary for the state to make a determination regarding [US LEC’s] request.” FCC Interconnection Order, paragraph 1261.


In short, the FCC has already considered and rejected TDS’s interpretation of Section 251(f) and has declared that, in such a proceeding as this, the state’s focus should be on the incumbent LEC and how it will be affected by hypothetical “efficient competitive entry” and not on the specific plans of the carrier requesting interconnection. Therefore, there is no reason why a bona fide interconnection request must contain a detailed description of US LEC’s proposed services.

## CONCLUSION

For these reasons, TDS's Motion to Suspend should be denied.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:   
Henry Walker  
414 Union Street, Suite 1600  
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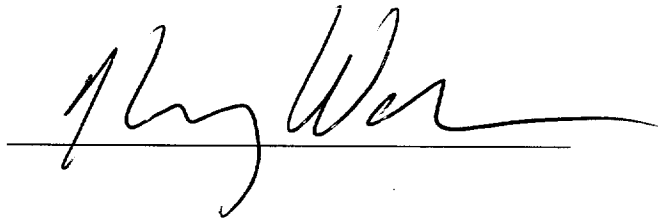
## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served via U.S. First Class Mail or Hand Delivery on the parties of record on this the 10<sup>th</sup> day of February, 2000.

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January 4, 2000

EXECUTIVE SECRETARY

Mr. David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

Dear David:


Pursuant to Section 251(f)(1) of the federal Telecommunications Act of 1996, US LEC Corp. hereby notifies the Tennessee Regulatory Authority that US LEC has made a "bona fide request" for interconnection with the four TDS-owned, local exchange carriers in Tennessee. A copy of the request is attached.<sup>1</sup>

This notice to the TRA is intended to trigger the 120-day time period within which the TRA must decide, based on the legal standards described in Section 251(f)(1), whether TDS is required to comply with the interconnection obligations contained in Section 251.

Sincerely,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:

  
Henry Walker

HW/nl  
Attachment  
c: T. G. Pappas  
Aaron Cowell

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<sup>1</sup> In a previous letter to TDS, dated July 13, 1999, US LEC explained that the company desires to negotiate a single, consolidated interconnection agreement with TDS with separate attachments setting forth rates for the four TDS-owned companies in Tennessee.

RECEIVED DEC 13 1999



December 7, 1999

John Monroe  
TDS Telecom  
725 Pellissippi Parkway, Suite 230  
Knoxville, TN 37932

**RE: Request for Interconnection Negotiations Pursuant to Section 251 of the Telecommunications Act of 1996 with TDS Telecom and its Companies in the State of Tennessee**

Dear Mr. Monroe:

The purpose of this letter is to formalize US LEC's request for an interconnection agreement with TDS Telecom and its local exchange operating companies (TDS) in the state of Tennessee. US LEC looks forward to concluding an agreement with TDS addressing the areas of interconnection, access to unbundled elements, resale of telecommunications services, and transport and termination of traffic as contemplated by Sections 251(a) through (c) of the Act. In order to facilitate the discussions between US LEC and TDS, I request that, at a minimum, the topics of negotiation include:

1. Interconnection Arrangements

US LEC and TDS should reach efficient and mutually agreeable interconnection arrangements that include non-discriminatory, real-time access to databases, at cost-based rates pursuant to Section 252(d)(1) of the Act, and associated signaling necessary for call routing and completion.

TDS should also make available to US LEC collocation for equipment necessary for interconnection or access to unbundled network elements as contemplated by Section 251(c)(6) of the Act.



2. Meet-Point Billing Arrangements

US LEC would like to establish meet-point billing arrangements with TDS so that it may offer a common transport option to parties purchasing originating and terminating switched access services from US LEC.

3. Reciprocal Compensation

Compensation for traffic exchanged between the networks of US LEC and TDS should allow for the mutual and reciprocal recovery of costs associated with transport and termination as contemplated by Sections 251(b)(5) and 252(d)(2) of the Act.

4. Access to Ancillary Platforms

US LEC seeks access to all ancillary platform arrangements such as 911/E911, Directory Assistance, Directory Listings and Directory Distribution, Transfer of Service Announcement, Coordinated Repair Calls, and Busy Line Verification and Interrupt.

5. Unbundled Elements

US LEC requests nondiscriminatory access to TDS' network elements on an unbundled basis as contemplated by Section 251(c)(3).

6. Number Portability

Until permanent number portability arrangements are available under Section 251(b)(2), US LEC and TDS should provide interim number portability ("INP") options to each other on a competitively neutral basis, in accordance with the FCC's July, 1996 Number Portability Order.



7. Access to Rights-of-Way

US LEC would like access  
TDS' poles, ducts, conduits, and rights-of-way as needed by US LEC  
to provide local exchange services.

8. Resale of Local Services

TDS should make available to US LEC for resale, at wholesale rates as  
defined in Section 252(d)(3), any telecommunications services  
currently provided at retail to subscribers who are not  
telecommunications carriers.

The suggested topics of negotiations listed above are intended only to  
assist in establishing an initial framework for interconnection negotiations.  
US LEC reserves the right to suggest additional or modified arrangements as  
negotiations proceed.

Basically, US LEC would like to provide local exchange services to  
customers currently located within TDS's traditional serving area.  
Furthermore, we would like to do this in concert with TDS through a fully  
functional interconnection of our respective networks at a mutually agreeable  
point (or points) inside TDS's service boundary in accordance with the terms  
of the Act.

This is a "bona-fide request" for interconnection pursuant to 47 U.S.C.  
251(f)(1)(A). We are therefore providing a copy of the request to the  
Tennessee Regulatory Authority pursuant to Section 251(f)(1)(A).

All notices or other communication following approval of the  
agreement should be sent to: Aaron D. Cowell, Jr.

Executive Vice President, General Counsel  
US LEC Corp.  
Transamerica Square  
401 N. Tryon St., Suite 1000  
Charlotte, NC 28202



During the negotiation process I will be the primary contact and may be reached at the following:

(Telephone) 704.319.1176

(Facsimile) 704.319.0069

We thank you in advance for your prompt attention to this matter and look forward to receiving your response so that we can set about the task of completing negotiations on an interconnection agreement in accordance with the terms of the Telecommunications Act of 1996.

Very truly yours,

A handwritten signature in black ink, appearing to read "Cathy J. Quinn", written over a horizontal line.

Cathy J. Quinn  
Manager - Interconnect Agreements

Cc: Aaron D. Cowell, Jr.  
US LEC Corp.

David Waddell  
Tennessee Regulatory Authority

Henry M. Walker, Esq.